

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

October 22, 2008 Session

SOUTHERN CELLULOSE PRODUCTS, INC. v. STEPHEN DEFRIESE

Direct Appeal from the Circuit Court for Hamilton County

No. 06-C-1558 W. Jeffrey Hollingsworth, Judge

Filed January 22, 2009

No. E2008-00184-WC-R3-WC Mailed December 22, 2008

After the employee suffered an employment-related injury to his right extremity, for which he was entitled to workers' compensation, the employer filed suit contesting any award of benefits for the employee's claim that the injury aggravated his pre-existing bipolar disorder. The trial court awarded compensation for the injury to the right extremity, capped at 1.5 times the impairment rating, but denied compensation for aggravation of the pre-existing condition. The employee appealed. The appeal was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. The cause is remanded with instructions for a determination of whether the trial court had subject matter jurisdiction.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court
Affirmed and Cause Remanded**

GARY R. WADE, J., delivered the opinion of the court, in which DONALD P. HARRIS, SP. J., and WALTER C. KURTZ, SP. J., joined.

Harry F. Burnette and Doug S. Hamill, Chattanooga, Tennessee for the appellant, Stephen DeFriese.

David F. Hensley, Chattanooga, Tennessee for the appellee, Southern Cellulose Products, Inc.

MEMORANDUM OPINION

Facts and Procedural Background

On September 18, 2005, Stephen DeFriese (the "Employee"), a forklift operator for Southern Cellulose Products (the "Employer"), suffered a crush injury when an 800-pound roll of paper rolled over his right hand and arm. Compensability for the injury to the arm is not in dispute. Dr. Robert Mastey, an orthopaedic surgeon, treated the Employee, finding contusions on the bones of the wrist, a sprain of the scapho-lunate ligament, and carpal tunnel syndrome. Dr. Mastey initially administered conservative treatment while the Employee continued to work but performed carpal tunnel release surgery on December 6, 2005. The Employee returned to light duty for a short period of time in January of 2006.

Dr. James Kennedy, a plastic surgeon who specialized in the treatment of hands, examined the Employee in June of 2006. After determining the Employee had reached maximum recovery by August of 2006, Dr. Kennedy assigned a permanent anatomical impairment of 7% to the arm. Although the record is unclear, it appears that Dr. Kennedy did not place any permanent restrictions upon Employee's use of his arm.

The Employee, forty-five years old at the time of trial, asserts that the injury to his hand caused a permanent aggravation of his pre-existing bipolar disorder. This was the primary issue at trial.¹ The Employee was hospitalized with psychiatric problems while in the military service before being medically discharged, and was again hospitalized at Mocassin Bend Mental Health Institute when he was in his twenties. Further, in 1997, the Employee was treated at Valley Psychiatric Hospital ("Valley") for drug and alcohol dependency, and at that time was diagnosed as bipolar. He was placed on medication, received psychological counseling, and since that time has continued to undergo a course of treatment.

In 1999, the Employee began working for the Employer, and, in 2004, he entered a counseling program through the Employer's Employee Assistance Program ("EAP"). Roy ("Bud") Ragan, a clinical social worker, served as the Employee's counselor and treated him intermittently until June of 2006. In March of 2005, while under the treatment of Ragan, the Employee was hospitalized for four days after experiencing mood swings, feeling hopelessness, and contemplating suicide. He also had auditory and visual hallucinations and reported thoughts of committing violence against his co-workers. After being discharged to an outpatient program, he eventually returned to work for the Employer. Some four months later, in July of 2005, the Employee was once again admitted to Valley when he attempted to commit suicide by taking an overdose of medication. He also threatened to cut himself with a box cutter. This occurred either during, or just after, a day at work. He was taken by ambulance from the Employer's parking lot to Erlanger Hospital, from which he was transferred to Valley. During this stay, the Employee discussed how he dreaded and feared going to work and acknowledged having not only suicidal thoughts, but also homicidal feelings toward his boss. After his release, he received intensive outpatient therapy before returning to work a month later. He suffered the work injury shortly thereafter.

In addition to these issues, the Employee had experienced marital difficulties throughout this period of time. In a meeting with his treating psychiatrist, Dr. Cui, on October 25, 2005, one month after his work injury, the Employee's wife informed him that she wanted a divorce. On November 15, he learned from his wife that his son, also bipolar, was threatening to run away from home. The Employee, agitated by the conversation with his wife, threatened a co-worker with an iron bar and was suspended from work.

After the carpal tunnel release surgery in December of 2005, the Employee, as stated, again returned to work with some restrictions as to the use of his hand; however, sometime in mid-January

¹ A co-worker, Thomas Boruff, testified on behalf of the Employee. It was Boruff's opinion that the Employee was more easily agitated after the hand injury and was fearful about the possibility of injury at work. He acknowledged, however, that the Employee's mood swings occasionally worsened due to his medications and his domestic difficulties.

2006 he had “a complete, emotional and physical breakdown” at the end of his work shift. With the help of EAP, he left the workplace. In March of 2006, the Employee was released to return to work with restrictions by Dr. Mastey, and EAP granted a similar release. When the Employer attempted to schedule his return, the Employee contacted Ragan, informing him that he was physically and mentally unable to work. In turn, Ragan so advised the Employer. In July of 2006, after the Employee’s application for Social Security Disability benefits for the bipolar disorder was approved, the Employee resigned. He described himself as a mental and emotional “basket case” during the summer of 2006 – having panic attacks, experiencing more frequent hallucinations than before the injury, and unable to “leave home.” The Employee contended that his work injury either caused or exacerbated many of the symptoms of his bipolar disorder. Although the Employee has served as a volunteer at a hospital, he had not been gainfully employed since his departure from the Employer. His bipolar condition has been controlled somewhat by medication, although changes in his medication have occasionally caused his symptoms to worsen or improve.

One of the conflicts between the Employee and his wife concerned his willingness or ability to work. After he was released to work by Dr. Mastey, his wife gave him an ultimatum to either return to work or move out. The Employee chose to move in with his brother, who had alcohol and drug abuse problems and who had also abused the Employee as a child. As a result, the Employee was under considerable stress. Some months later, his sister, who lived in Cleveland, allowed him to move into her residence. The Employee’s mental health care providers changed several times during this period. Other than Ragan, none of the psychiatrists or counselors who treated him during this period testified at trial. This included Dr. Cui, the psychiatrist who was treating the Employee during the period immediately preceding and following his arm injury. Dr. Cui saw the Employee more than ten times, both before and after the accident in September of 2005.

Each side presented the testimony of an evaluating psychiatrist. Dr. Aslam Sandvi performed an independent medical evaluation at the request of the Employee’s attorney on November 5, 2006. After reviewing the medical records and conducting an interview, he opined that Employee’s pre-existing bipolar disorder was aggravated by the hand injury. He assigned a 40% permanent impairment of the entire body for the condition. He used the Second Edition of the AMA Guides, because the Fifth Edition did not provide specific impairment percentages. Dr. Sandvi expressed awareness that the Employee’s bipolar illness existed before the work injury, and he described the condition as incurable. It was his belief that all of the impairment was attributable to the work injury, however, because the Employee “was able to function prior to [the injury] in spite of his emotional difficulties.” He also opined that the Employee remained unable to work as a result of that illness.

Dr. Greg Kyser conducted an independent medical evaluation at the request of the Employer’s attorney. Like Dr. Sandvi, he reviewed medical records and interviewed the Employee. His primary diagnosis was the same as that of Dr. Sandvi – bipolar disorder. He concluded, however, that the injury to the Employee’s hand did not result in a permanent aggravation of that condition. He explained that the Employee “had a long history of instability, he’s had a long history of stress in regards to his family life, his occupational life, and I don’t see any change in that pattern.”

Ragan, the Employee’s EAP counselor, testified as a witness for the Employee. He identified

the pain from the hand injury as a stressor which diminished the Employee's ability to work. On cross-examination, however, he admitted that the Employee was depressed prior to the hand injury, and that it was difficult to say whether his condition had been made worse by the injury.

The trial court found that the Employee had sustained a 7% anatomical impairment to the arm and awarded 10.5% permanent partial disability to the arm for that injury. Because the trial judge found Dr. Kyser's testimony to be more credible than that of Dr. Sandvi, he concluded that the Employee did not suffer a compensable aggravation of his pre-existing bipolar disorder.

In this appeal, the Employee presents four issues. First, he contends that the trial court erred by finding that Employee did not sustain a compensable mental injury. Second, he argues that the trial court also erred by finding that his recovery for his compensable arm injury was "capped" at one and one-half times the anatomical impairment. His third argument is that the trial court erred by failing to make an alternate finding concerning disability resulting from the Employee's mental condition. Finally, he contends that the trial court did not have jurisdiction over the subject matter of the case.

Standard of Review

In Tennessee workers' compensation cases, review of a trial court's findings of fact is de novo, accompanied by a presumption of correctness of the finding, unless the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991) (citing Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 675 (Tenn. 1991)). We give considerable deference in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony when the trial court has heard in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). The same deference need not be afforded findings based upon documentary evidence, such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). On questions of law, our standard of review is de novo with no presumption of correctness. Wilhelm, 235 S.W.3d at 126 (citing Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003)). Although the workers' compensation law must be construed liberally in favor of an injured employee, it is the employee's burden to prove causation by a preponderance of the evidence. Crew v. First Source Furniture Group, 259 S.W.3d 656, 664 (Tenn. 2008).

Analysis

1. Aggravation of Bipolar Condition

The Employee first contends that the evidence preponderates against the trial court's finding that the hand injury did not cause a permanent aggravation of his pre-existing bipolar disorder. He argues that the opinions of Dr. Sandvi are more credible than those of Dr. Kyser, contending that an opinion by Dr. Cui, the psychiatrist who treated the Employee but did not testify, arguably bolstered

Dr. Sandvi's view.² The Employee also points to the testimony of Ragan, who identified pain from the hand injury as a stressor for the Employee.

An employer takes an employee "as is" and assumes the responsibility of having a pre-existing condition aggravated by a work-related injury which might not affect an otherwise healthy person. Hill v. Eagle Bend Mfg. Inc., 942 S.W.2d 483, 488 (Tenn. 1997). In other words, an employer is "liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case." Baxter v. Smith, 364 S.W.2d 936, 942-43 (Tenn. 1961). However, when a plaintiff suffers from a pre-existing condition, a claim is only compensable if the work-related injury causes an actual progression or aggravation of the underlying condition. Barnett v. Milan Seating Systems, 215 S.W.3d 828, 835 (Tenn. 2007). As with any workers' compensation claim, the employee bears the burden of proving that the aggravation of the pre-existing condition resulted from an injury that both arose out of and occurred in the course of the employment. See Tenn. Code Ann. § 50-6-102(12) (2008).

Our review of the entire record leads us to the conclusion that the evidence does not preponderate against the decision of the trial court. Indeed, the trial court's conclusions were a logical interpretation of the evidence. Both psychiatrists agreed that the Employee suffered from bipolar disorder for years prior to the work injury. Each also described the condition as incurable, but treatable with medication. Dr. Sandvi's key assertion, that the Employee was able to function prior to the work injury, is not consistent with the Employee's psychotic episodes in March and July of 2005, shortly before the hand injury occurred. Each of those incidents required inpatient treatment at a mental health facility. The records of the Employee's hospitalization in July of 2005 include information that he felt "trapped" in his job, "could not bear it," and harbored "homicidal feelings toward his boss." Further, the Employee actually continued to work after his hand injury until his surgery in December of 2005, and he returned to work for a period of time thereafter. All of these factors support the trial court's implicit findings that the Employee was severely mentally ill before his work injury and that his illness continued after that event. In short, the evidence does not preponderate against the findings of the trial court.

2. Application of 1.5 Multiplier Cap on Benefits

The Employee further alleges that the trial court erred by capping his recovery at 1.5 times the impairment rating for the hand injury. For most injuries occurring after July 1, 2004 where "an injured employee is eligible to receive any permanent partial disability benefits . . . and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury," the maximum benefits are capped at 1.5 times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A) (2008). In order to determine whether the statutory cap on benefits should apply, Tennessee courts have developed the concept of a "meaningful return to work." Tryon v. Saturn Corp., 254 S.W.3d 321, 328 (Tenn. 2008). Where

² The opinion was expressed in the form of a handwritten response by Dr. Cui to a question in a letter from the Employee's attorney. The Employer's attorney objected to the document during the deposition, and renewed his objection when the deposition was introduced at trial. The trial court did not explicitly rule on the objection.

employees have had a meaningful return to work after a work-related, compensable injury, their benefits are capped at 1.5 times the impairment rating under section 50-6-241(d)(1)(A); conversely, where there is no meaningful return to work, that cap does not apply. See id.

“The circumstances to which the concept of ‘meaningful return to work’ must be applied are remarkably varied and complex.” Id. Most relevant to the Employee’s claim are cases dealing with the reason for the employee’s resignation or retirement from work. Those cases stand for the proposition that when an employee returns to work but resigns or retires for reasons reasonably related to the work-related injury, then there is no meaningful return to work, and the statutory cap on benefits does not apply. Lay v. Scott County Sheriff’s Dep’t, 109 S.W.3d 293, 298 (Tenn. 2003); Tryon, 254 S.W.3d at 328-29. Conversely, if an employee resigns for personal reasons or other reasons unrelated to the compensable injury, there has been a meaningful return to work and the employee cannot avoid the statutory cap on benefits. Lay, 109 S.W.3d at 299; Tryon, 254 S.W.3d at 329.

Here, the evidence does not preponderate against the trial court’s finding that the Employee resigned for personal reasons not reasonably related to his compensable hand injury. The Employee did not return to work after January of 2006 and ultimately resigned in July of that year when his Social Security Disability benefits were approved. The evidence supports a conclusion that the bipolar disorder was the primary reason for his resignation. Because the Employee’s resignation was not reasonably related to his work injury, the trial court correctly applied Tennessee Code Annotated section 50-6-241(d)(1)(A) and limited the award for the Employee’s hand injury to one and one-half times the anatomical impairment.

3. Alternate Findings

The Employee also asserts that the trial court erred by failing to make an alternative finding about the extent of the Employee’s disability that resulted from the aggravation of his bipolar disorder. Because we have determined that the evidence does not preponderate against the trial court’s finding that the Employee’s mental condition is not compensable, we need not consider the merits of this claim.

4. Subject Matter Jurisdiction

As his final issue, the Employee contends that the trial court did not have jurisdiction over the subject matter of this case because the Employer failed to show that the administrative remedies required by Tennessee Code Annotated section 50-6-225(a)(1) were exhausted prior to the filing of its complaint. It is a settled rule that where a statute provides an administrative remedy, such remedy must first be exhausted before the courts will act. Bracey v. Woods, 571 S.W.2d 828, 829 (Tenn. 1978). This doctrine of exhaustion serves to prevent premature interference with agency processes. Thomas v. State Bd. of Equalization, 940 S.W.2d 563, 566 (Tenn. 1997).

In Tennessee, no workers’ compensation claim may be filed in circuit or chancery court until the conclusion of an unsuccessful benefit review conference:

- (1) Notwithstanding any provision of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under this chapter, between the employer and employee . . . the parties shall first submit the

dispute to the benefit review conference process provided by the division of workers' compensation.³

(2)(A) In the event the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner,⁴ either party may file a civil action as provided in § 50-6-203⁵ in the circuit or chancery court in the county in which the employee resides or in which the alleged injury occurred.

Tenn. Code Ann. § 50-6-225(a)(1), -225(a)(2)(A) (2008). As suggested by the statute, the commissioner has promulgated rules governing the benefit review conference process. These rules include a finite list of occurrences upon which a benefit review conference shall be deemed exhausted, one of which is the “[i]ssuance of an impasse report signed and dated by the Workers’ Compensation Specialist.” Tenn. Comp. R. & Regs. 0800-2-5-.09(1)(c) (2006). “Where a Benefit Review Conference concludes in impasse, the date and time noted on the report issued by a Workers’ Compensation Specialist shall determine when the Benefit Review process is exhausted.” Tenn. Comp. R. & Regs. 0800-2-5-.09(2) (2006).⁶ Because our workers’ compensation statute mandates the exhaustion of administrative remedies “by its plain words,” see Reeves v. Olsen, 691 S.W.2d 527, 530 (Tenn. 1985), such exhaustion is required before a court will have jurisdiction over the subject matter of a civil complaint filed in the case.

“In assessing factual challenges to subject matter jurisdiction at the motion to dismiss stage, a court must keep in mind that the plaintiff bears the ultimate burden of proving facts establishing the court’s jurisdiction over the case.” Staats v. McKinnon, 206 S.W.3d 532, 543 (Tenn. Ct. App. 2006). In Chenault v. Walker, 36 S.W.3d 45 (Tenn. 2001), which addressed personal jurisdiction rather than subject matter jurisdiction, but which was cited as authority in Staats, the Supreme Court held “that the plaintiff bears the ultimate burden of demonstrating that jurisdiction exists. If the defendant challenges jurisdiction by filing affidavits, the plaintiff must establish a prima facie showing of jurisdiction by responding with its own affidavits and, if useful, other written evidence.” Chenault, 36 S.W.3d at 56 (citations omitted).

³The “division of workers’ compensation” is located within the Tennessee Department of Labor and Workforce Development. Tenn. Code Ann. § 50-6-102(9) (2008).

⁴“Commissioner” means the commissioner of the Department of Labor and Workforce Development. Tenn. Code Ann. § 50-6-102(6).

⁵ Tennessee Code Annotated section 50-6-203(a)(1) (2008) states: “No claim for compensation under this chapter shall be filed with a court having jurisdiction to hear workers’ compensation matters, as provided in § 50-6-225, until the parties have exhausted the benefit review conference process provided by the division of workers’ compensation.”

⁶ The administrative rules governing exhaustion of the benefit review conference process were amended effective April 29, 2008. Here, however, we cite the language of the rules that were effective on November 16, 2006, the date that the benefit review process concluded.

These rulings are consistent with the practice in the federal courts for motions to dismiss for lack of subject matter jurisdiction brought under Federal Rule of Civil Procedure 12(b)(1), including those based on a plaintiff's failure to exhaust administrative remedies. 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1350 (“[T]he extensive case law on the subject makes clear that the burden of proof on a Rule 12(b)(1) motion is on the party asserting that subject matter jurisdiction exists, which, of course, typically is the plaintiff.”); see also RMI Titanium Co. v. Westinghouse Elec. Corp., 78 F.3d 1125, 1134 (6th Cir. 1996) (quoting Rogers v. Stratton Indus., Inc., 798 F.2d 913, 915 (6th Cir. 1986) (“[W]here subject matter jurisdiction is challenged under Rule 12(b)(1) . . . the *plaintiff* has the burden of proving jurisdiction in order to survive the motion.”)).

In West v. Vought Aircraft Industries, Inc., 256 S.W.3d 618 (Tenn. 2008), a workers' compensation complaint was filed less than a minute after the conclusion of the benefit review conference; both events occurred at 2:11 p.m. Id. at 620. The Supreme Court accepted that complaint to be valid, and held that the lawsuit became pending when it was filed, rather than when process was served. Id. at 624. However, the attorneys for the party filing the initial complaint provided evidence showing that the administrative remedies were exhausted prior to filing. Id. at 620 (describing the actions of the party's attorneys to file suit in chancery court immediately following conclusion of the benefit review conference).

The parties in this case participated in a benefit review conference, as they were required to do before filing a civil complaint. The Department of Labor and Workforce Development's impasse report was issued at 9:59:25 a.m. on November 16, 2005. The Employer filed a complaint in Hamilton County Circuit Court that was time-stamped at 9:59 a.m. that same day, without any reference to seconds. The Employee filed a complaint in Hamilton County Chancery Court less than thirty minutes later.⁷ Before trial, the Employee filed a motion to dismiss the Employer's complaint for lack of subject matter jurisdiction, alleging that the Employer had not shown that it waited until the conclusion of the benefit review conference to file its complaint. In response, the Employer dismissed the Employee's motion as “sour grapes” and offered no evidence to assure the trial court that the benefit review conference had concluded before it filed its complaint. Despite this, the trial court denied the motion to dismiss without analysis, and the case proceeded to trial.

That this issue is even being litigated exemplifies the problems inherent in the unseemly race to the courthouse that has been wrought by recent amendments to section 50-6-225(a)(1). If attorneys in workers' compensation cases are going to engage “in the undignified spectacle of literally racing to secure perceived procedural advantages,” West, 256 S.W.3d at 622, they would be well-served to include evidence in the record establishing that the necessary administrative remedies were exhausted and that the trial court has subject matter jurisdiction. Because, however, the trial court here summarily denied the Employee's motion to dismiss, the record is not sufficiently

⁷The record is unclear as to whether the Chancery Court dismissed Employee's complaint under the “prior suit pending” doctrine. That doctrine, which is well-established in Tennessee, “dictates that a case is subject to dismissal if there is a prior lawsuit pending involving the same parties and the same subject matter.” West, 256 S.W.3d at 620. One of the prerequisites for application of this doctrine is that “the former lawsuit must be pending in a court having subject matter jurisdiction over the dispute.” Id. at 623.

developed. Because both the impasse report and the civil complaint were stamped at 9:59 a.m., and the complaint contains no reference to seconds, it is not apparent from the face of the documents which was filed earlier. Further, there is no evidence as to whether the clocks at the Department of Labor and Workforce Development and the Hamilton County Circuit Court were perfectly coordinated, or whether the former was faster or the later slower. Finally, there is neither an affidavit as to the timing issue nor live testimony establishing that counsel for the Employer waited until after the impasse report was stamped to file the complaint. A remand to the trial court is, therefore, necessary for a determination of subject matter jurisdiction.

The burden of proof to show the exhaustion of the statutorily-imposed administrative remedies will be on the Employer. If subject matter jurisdiction was properly vested in the Circuit Court of Hamilton County, then its judgment shall be reinstated. Should the Circuit Court find a lack of subject matter jurisdiction, the motion to dismiss on that basis should be sustained.

Conclusion

The cause is remanded to the trial court. Costs are taxed one-half to the Employee, Stephen DeFriese, and his surety, and one-half to the Employer, Southern Cellulose Products, Inc., for which execution may issue if necessary.

GARY R. WADE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

SOUTHERN CELLULOSE PRODUCTS, INC. V. STEPHEN DEFRIESE
Hamilton County Circuit Court
No. 06-C-1558

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No. E2008- 00184-WC-R3-WC

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed one-half to the employee, Stephen DeFriese, and his surety, and one-half to the Employer, Southern Cellulose Products, Inc., and its surety, for which execution may issue if necessary.